

Legal Update 2013



Indiana Prosecuting Attorneys Council

Search and Seizure



BLOOD DRAWS

Bisard v. State (September 2012)

- ❑ Trial court suppressed the .19% BAC result
- ❑ Medical assistant at Occupational Health Center not qualified to draw blood
- ❑ Ct. of Appeals reversed
- ❑ Medical assistant's taking of the blood conformed to a protocol prepared by a physician



Missouri v. McNeely (April 2013)

- ❑ United States Supreme Court
- ❑ Blood draw after routine traffic stop without consent or warrant
- ❑ Must have exigent circumstances to draw blood without a warrant
 - Natural metabolism of alcohol is not alone sufficient



Search and Seizure



Warrantless Searches

Paul v. State (July 2012)

- ❑ Exigent circumstances warranted entering def's open apartment door to make an arrest without a warrant
- ❑ Warrantless arrest in a home requires both probable cause and exigent circumstances
- ❑ Gravity of the underlying crime alone doesn't create exigent circumstances but is an important factor

Gaines v. State (September 2012)

- ❑ Defendant attempted to swallow something
- ❑ Officer put tazer in his back and told him to spit it out
- ❑ PC for a warrantless search as def was trying to swallow something



Gaines v. State (September 2012)

- ❑ Was is reasonable to use the threat of a tazer?
- ❑ 3 part balancing test
 - Extent it will threaten safety or health of person
 - Extent of intrusion on personal privacy and bodily integrity
 - Community's interest in fairly and accurately determining guilt or innocence
- ❑ Choke hold is dangerous but the threat here involved no physical force



Kirk v. State (September 2012)

- ❑ During valid search incident to arrest, officers found a cell phone
- ❑ Officers immediately looked at text messages
- ❑ Must have search warrant to search a cell phone unless have an exception
 - Not arrested for crimes involving use of a cell phone
 - Def not seen using or even holding the phone



Hall v. State (September 2012)

- ❑ After high speed chase, def left his car in a field
- ❑ Police found one pot meth lab inside the car
- ❑ Def had abandoned the car so not protected by the 4th amendment



- ❑ No reasonable expectation of privacy in the property

Clanton v. State (November 2012)

- ❑ During pat down officer feels something sharp



- ❑ Removed the item and discovered it was a pen cap
- ❑ Officer violated 4th amendment when he looked inside the cap and found cocaine

Bowers v. State (December 2012)

- ❑ Police had reasonable suspicion to stop the def AND
- ❑ Police could've stopped def for honking the horn in violation of statute

State v. Guilmette (April 2013)

- ❑ Def under arrest for Theft
- ❑ Police take defs shoes and clothing pursuant to arrest
- ❑ Police needed a SW to send the items for DNA testing



State v. Lagrone (March 2013)



- ❑ No 4th amendment violation to place GPS inside parcel
- ❑ No 4th amendment violation to use the GPS in conjunction with visual surveillance to follow def to his home
- ❑ Use of the electronic parcel wire inside the defs home was a search under the 4th amendment and required a SW
- ❑ No exigent circumstances to enter def's home without a SW because police created the exigency

Search and Seizure



TRAFFIC STOPS

Graham v. State (July 2012)

- ❑ Valid traffic stop
- ❑ Asked def if he had drugs or guns
- ❑ Def said he had hydrocodone



- ❑ Officer permitted to ask questions of a detained motorist
- ❑ Was not extended longer than necessary to complete the stop so no violation of def's rights

Lock v. State (July 2012)



- ❑ Habitual Traffic Violator
- ❑ Motor vehicle does not include “motorized bicycle”
 - Maximum design speed of not more than 25 mph
- ❑ This scooter traveled 43 mph and the Indiana Supreme Court held the evidence was sufficient to show this scooter had a maximum design speed of greater than 25 mph
- ❑ Needs a legislative fix
 - Not every scooter-type vehicle traveling over 25 mph will be a motor vehicle

Killebrew v. State (October 2012)

- ❑ Reversed conviction due to improper traffic stop
- ❑ Def had turn signal on but continued through intersection without turning
- ❑ Not violation of statute
- ❑ No other evidence of impaired driving
- ❑ No “community caretaking function”



Austin v. State (January 2013)

- ❑ ISP inspector alerts other trooper about inconsistencies
- ❑ Trooper stops semi after observing 2 traffic infractions
- ❑ Def refuses to consent to search
- ❑ K9 alerts



- ❑ Stop and search was reasonable under circumstances

Sanders v. State (January 2013)

- ❑ Reversed trial court's order denying motion to suppress
- ❑ Traffic stop due to back window tint being too dark



- ❑ Def presented “expert” to say it complied with statute
- ❑ Officer did not have a justifiable reason for stop

State v. Porter (April 2013)



- ❑ Def stopped because license plate wasn't visible from 50 ft
- ❑ Def argued that the light met federal manufacturing standards and that it was operational
- ❑ Ct held the traffic stop was proper



Robinson v. State (April 2013)

- ❑ Brief contact with the fog line alone is not reasonable suspicion
- ❑ If add other factors it could be reasonable suspicion
 - Repeated swerving
 - Swerving over an extended distance or period of time
 - Almost hitting things or causing an accident
 - Road or weather conditions explain the conduct
 - Driver overcorrects when returning to the lane of travel



State v. Keck (April 2013)

- ❑ Driving slowly in the middle of a country road to avoid potholes was a necessity and compliance with the statute was not possible under the circumstances





Search and Seizure



DOG SNIFFS

Perez v. State (February 2013)

- ❑ Drug investigation led police to def's house
- ❑ Def arrested for resisting
- ❑ Canine alerted at house



- ❑ Followed *Hoop* requiring reasonable suspicion to have a canine sniff the front door of a residence
- ❑ BUT.... See *Florida v. Jardines*

Florida v. Jardines (March 2013)

- ❑ United States Supreme Court (5-4 decision)
- ❑ Bringing a trained canine onto the curtilage of a private residence is a search in violation of the 4th amendment
- ❑ SW is required
- ❑ “Knock and talks” still okay
- ❑ Sniffs of vehicles, rented storage units, luggage, packages still probably okay
- ❑ Calls into question *Perez* and *Hoop*



Florida v. Harris (February 2013)

- ❑ United States Supreme Court
- ❑ Canine sniff of car



- ❑ Evidence of a dog's satisfactory performance in a training or certification program may, by itself, be enough
- ❑ Def must have opportunity to challenge the evidence regarding reliability of the canine
- ❑ Must hold a PC hearing like any other case

Miranda Rights



State v. Bean (September 2012)

Joseph v. State (October 2012)

- ❑ Illegal search of home
- ❑ Statements made to police later at the station were tainted by the illegal search
- ❑ Factors to consider:
 - Time between illegality and acquisition of the evidence
 - Presence of intervening circumstances
 - Purpose and flagrancy of the official misconduct
 - Giving of *Miranda* warnings



Steele v. State (October 2012)

- ❑ IRE 617 custodial interrogation in a “place of detention” must be recorded
- ❑ Def was not in a “place of detention” when he was questioned
- ❑ Police do not have to transport a person to a “place of detention” before questioning them



Various Other Cases



Garcia v. State (October 2012)

- ❑ Def charged with Criminal Recklessness
- ❑ Vehicle is a “place where people are likely to gather” for criminal recklessness



Hassfurth v. State (May 2013)

- ❑ Implied consent
- ❑ Officer had PC to offer implied consent even though he didn't observe driving
 - Citizen information was corroborated by officer
- ❑ Officer read implied consent from card but def had prior which allowed for driver's license suspension of up to 2 years
- ❑ Officer's oral notice that def could be suspended for 2 yrs was sufficient
- ❑ Implied consent "cards" should include both

Statutory Update

Statutory Update

- ❑ Synthetic Drugs - S.E.A. 536, P.L. 196-2013 - Effective May 7, 2013
- ❑ Significant Civil Penalties – Can result in the revocation of retailers license
- ❑ Adds “Synthetic Drug Look-alike Substance”
 - Any substance a reasonable person would believe is a synthetic drug; OR
 - A substance a person knows or should have known was intended to be consumed, and that consumption was intended to cause intoxication
 - Does not include food, dietary supplements, controlled substances, alcohol, or tobacco.
 - Second definition requires criminal intent, but is broad.
- ❑ Adds a new prong to the definition of Intoxication:
 - Any substance; excluding food, food ingredients, controlled substances, alcohol, tobacco
 - Catches any synthetics that come out, or anything else people are getting high on that doesn't fit the exclusions

Statutory Update

- ❑ Blood Draws - S.E.A. 168, P.L. 237-2013
Effective July 1, 2013
- ❑ Response to the legal issues brought up in the Bisard case.
- ❑ Allows for “Any person trained” to draw blood
 - Allows the state to argue that a person was properly trained
 - Allows the defense the question the quality of the draw
- ❑ Sets rules for when law enforcement cannot draw blood:
 - When the person to be drawn from is another law enforcement officer
 - Still requires consent or a warrant

Statutory Update

❑ Vehicle Registration - HB 1082

- Previous statute required that registration be signed in ink.
- New statute no longer requires signature to be in ink.
- Yes, we spent time passing a bill on this important issue.
- Yes, I am serious.
- Stop laughing.



Statutory Update

- ❑ Habitual Traffic Violator - S.E.A. 538, P.L. 85-2013
 - Issue with the BMV issuing suspensions; i.e., a person getting their notice of HTV 7 years after the conviction that triggers the HTV determination.
 - New statute gives the BMV 3 years to issue suspension, if they do not, they can only suspend from the time of the last violation.
- ❑ S.E.A 538, P.L. 85-2013 is a much larger bill, a “BMV Cleanup bill”



Statutory Update

- ❑ Intimidation - S.E.A. 361, P.L. 123-2013
Effective July 1, 2013
- ❑ Intimidation now includes posting to social networking sites like Facebook and Twitter.
 - High burden – How do we know who posted the threat?
 - Includes penalties for scenarios like posting bomb threat at school, or threatening Judges, Bailiffs, or Prosecutors.



Statutory Update

- ❑ Sale of electronic cigarettes to minors -

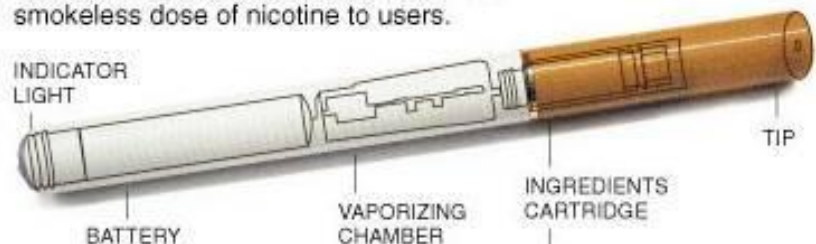
[H.E.A. 1225, P.L. 20-2013](#)

Effective July 1, 2013

- ❑ Cannot sell to minors
- ❑ Must be 18+ to possess

Puffs of Fog

Electronic cigarettes deliver an odorless, smokeless dose of nicotine to users.



An electronic cigarette is powered by a small rechargeable **battery**.

When a user inhales, a sensor detects air flow and starts a process to **heat liquid** from a replaceable cartridge so it vaporizes.

The **cartridge** contains propylene glycol, water, flavoring and varying levels of nicotine (like regular or light).

The propylene glycol produces a vapor mist that looks like smoke and carries the nicotine.

Statutory Update

- ❑ Open container laws - H.E.A. 1579, P.L. 290-2013
Effective July 1, 2013
Provides that, for purposes of open container laws, the exemption for a person who is in the passenger compartment of a vehicle used to transport passengers for compensation or the living quarters of a house coach or trailer does not apply to the operator of the vehicle.
- ❑ Required for compliance with Federal funding requirements.